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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

RAYMUNDO A.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Real Party in Interest.

D062171

(San Diego County  
Super. Ct. No. SJ12497)

PROCEEDINGS in mandate after referral to a Welfare and Institutions Code section 366.26 hearing. Garry G. Haehnle, Judge. Petition denied; request for stay denied.

Raymundo A., the father of Crystal A., seeks extraordinary writ relief (§ 366.26, subd. (I); Cal. Rules of Court, rule 8.452.); he challenges the juvenile court's orders terminating reunification services after 12 months and setting a section 366.26 hearing. Raymundo contends he did not receive reasonable services.

This court issued an order to show cause, the San Diego County Health and Human Services Agency (Agency) responded, and the parties waived oral argument. We review the petition on its merit and deny it.

## FACTS

When Crystal was born in January 2011, the Agency instituted a safety plan because both Raymundo and the mother had learning disabilities and did not seem to have the knowledge or ability to care for a baby. The mother had not received prenatal care because she did not know she was pregnant until the day she gave birth.<sup>1</sup> The safety plan called for another family member to be present with the baby at all times to ensure her safety and well-being.

In February, the Agency filed a dependency petition on behalf of Crystal because Raymundo and the mother failed to abide by the safety plan—that is, on multiple occasions the social worker found the parents unsupervised and alone with Crystal. The petition, as later amended, alleged that her parents' inability to provide regular care because of their "disability limitations" put Crystal at substantial risk of harm. (§ 300, subd. (b).)

The juvenile court sustained the amended petition and placed Crystal in the home of the paternal great-grandmother. Raymundo's reunification plan called for him to undergo a psychological evaluation and complete an in-home parenting program. Raymundo attended in-home parenting sessions every Wednesday in the great-grandmother's home. Raymundo also visited Crystal on Saturdays and Sundays.

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<sup>1</sup> The mother is not a party to this appeal.

In May, Raymundo underwent a psychological evaluation by Thomas J. Barnes, Ph.D., who concluded Raymundo had comprehending and processing difficulties as well as learning disabilities, but was not developmentally disabled. Dr. Barnes said Raymundo had a seventh grade reading level and struggled with verbal expression. Dr. Barnes also said Raymundo suffered from depression. Dr. Barnes recommended a neuropsychological evaluation to assess Raymundo's potential capacity to learn parenting skills needed to independently care for Crystal, as well as psychotherapy for his depression.

Social worker Hazael Lopez, who was assigned to the case in late July, referred Raymundo for a medication evaluation based on Dr. Barnes's evaluation of depression. Raymundo provided the social worker with a letter from a walk-in clinic saying he did not need medication.<sup>2</sup>

At the six-month review hearing, Lopez recommended Raymundo receive six more months of services, including individual therapy, in-home parenting and a neuropsychological evaluation. The juvenile court followed the recommendation.

Lopez gave Raymundo referrals for an individual therapist in August and October, as well as in January 2012. During phone conversations and in person, Lopez encouraged Raymundo to enroll in therapy.

In January 2012, Raymundo underwent a neuropsychological evaluation by J. Vincent Filoteo, Ph.D., who reported Raymundo's "general intellectual abilities are intact, and his perceptual reasoning abilities are above average. His verbal intellectual abilities,

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<sup>2</sup> At trial, Raymundo testified he did not remember being referred for a medication evaluation.

however, are in the low average range. ¶ [Raymundo] demonstrated fairly consistent deficits in verbal cognition, executive functioning (cognitive set shifting) and psychomotor speed." Dr. Filoteo also offered this prognosis: "Overall, although I do feel that [Raymundo] could benefit from therapy and parenting training, it is my opinion that ultimately he will still be unable to effectively parent independently and would need continuous supervision from others."

Also in January, Raymundo started therapy with psychologist Daniel O'Roarty. The therapy continued to May, when Dr. O'Roarty left the state. Lopez told Raymundo to find a new therapist.

Agency recommended services be terminated at the 12-month review hearing. Although Raymundo showed more progress with the in-home parenting program than the mother, his progress was slow. Usually parents complete the program in three to five months, but it took Raymundo over a year. When the social worker observed a session, Raymundo needed directions to properly react to two potentially dangerous situations with Crystal.

At the contested 12-month review hearing, Raymundo presented the testimony of Mark McDonough, a neuropsychologist, who reviewed the results of the tests administered by Drs. Barnes and Filoteo. Dr. McDonough also interviewed Raymundo. Dr. McDonough concluded Raymundo had a learning disability and suffered from depression. Dr. McDonough opined Raymundo should have been placed on an antidepressant medication and been provided proactive therapy—as opposed to verbally based therapy—to treat his depression. He also opined Raymundo should have been provided "proactive in-the-home"

therapy to address his parenting deficiencies. Although Dr. McDonough had "reservations" about Raymundo's ability to ultimately parent the child independently, he opined that Raymundo could parent with support and professional assistance.

At the end of the contested hearing, the court found Agency had provided reasonable services to both parents, and no substantial probability existed that Crystal would be returned to them during the next review period. The court also found the parents had not made significant progress in resolving the problems that led to Crystal's removal and had not demonstrated the capacity to complete the objectives of their case plan and provide for the protection, well-being and needs of the child. The court terminated services to both parents and set a section 366.26 hearing to determine Crystal's permanent plan.

#### DISCUSSION

Raymundo contends he was not provided with reasonable reunification services in light of his disability limitations. The contention is without merit.

Section 361.5, subdivision (a) generally mandates that reunification services are to be provided whenever a child is removed from the parent's custody. (*In re Luke L.* (1996) 44 Cal.App.4th 670, 678.) "Only where there is clear and convincing evidence the [child welfare agency] has provided or offered reasonable services may the court order a section 366.26 hearing." (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1165 (*Robin V.*); § 366.21, subd. (g)(1).)

A reunification plan must be tailored to fit the specific circumstances of each family and must be designed to eliminate those conditions that led to the juvenile court's jurisdictional findings. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) " '[T]he record

should show that the [child welfare agency] identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult (such as helping to provide transportation and offering more intensive rehabilitation services where others have failed).'  
[Citation.]" (*Robin V.*, *supra*, 33 Cal.App.4th at p. 1165.) The juvenile court and Agency are required to accommodate the special needs of disabled parents. (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1792.)

The fact that additional services might have been possible does not render the services inadequate. "The adequacy of reunification plans and the reasonableness of the [child welfare agency's] efforts are judged according to the circumstances of each case." (*Robin V.*, *supra*, 33 Cal.App.4th at p. 1164.) To support a finding reasonable services were provided, "the record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult . . . ." (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

Our standard of review is sufficiency of the evidence. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971.) We view the evidence in a light most favorable to the judgment,

indulging in all legitimate and reasonable inferences to uphold it, and if there is substantial evidence, the judgment cannot be disturbed. (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 545.)

We conclude there is substantial evidence to support the court's finding that Agency provided reasonable reunification services to Raymundo. Agency took Crystal into protective custody because her parents' limitations prevented them from properly caring for her. The reunification services Agency provided to Raymundo took into account his learning disabilities. Agency offered Raymundo in-home parenting classes; these hands-on classes were extended to a year—more than twice the length of the normal course—to provide him with more instruction given his level of learning.<sup>3</sup> Raymundo also underwent a psychological evaluation by Dr. Barnes, who recommended a neuropsychological evaluation and psychotherapy. Agency followed Dr. Barnes's recommendations; it set up a neuropsychological evaluation and offered Raymundo psychotherapy. Agency also referred Raymundo for a medication evaluation based on Dr. Barnes's opinion that Raymundo suffered from depression.

Notwithstanding Raymundo's assertion to the contrary, these services were designed to meet his special needs. We strongly disagree Agency "treated [Raymundo] like any other parent who did have not limitations." We also conclude the record belies Raymundo's claim that the social worker's "complete lack of effort . . . rendered the services . . . unreasonable."

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<sup>3</sup> In October 2011, the social worker modified Raymundo's case plan so that he would receive individual in-home parenting classes rather than receive conjoint instruction along with the mother.

Raymundo complains the neuropsychological evaluation was unduly delayed, noting Dr. Barnes recommended it in mid-May and it did not take place until January. However, it does not appear Lopez, the social worker, is responsible for the delay. Lopez, who was assigned to the case at the end of July, met with and interviewed Raymundo in August. Lopez requested the court order the neuropsychological evaluation at the six-month review hearing in September and reported he had asked the Agency staff psychologist to facilitate such an evaluation occurring as soon as possible. On September 29, the court ordered Raymundo to submit to the neuropsychological evaluation. There also appeared to be a holdup in December when Dr. Barnes refused to release his raw data to Dr. Filoeto without a court order; Lopez sought an ex-parte hearing and obtained the necessary court order.

Raymundo also faults the social worker for not adding behavior-based therapy to his case plan as recommended by Dr. Filoeto. This criticism is based on the neuropsychologist's response to a question regarding whether Raymundo could "benefit from office-based therapy to assess/address his motivation/interest in effective parenting." Dr. Filoeto's response: "It is possible that [Raymundo] would benefit from office-based therapy to help him further develop his parenting skills. However, this would likely take an extended time and would have to occur in the context of the treatment of his psychological issues that were identified during this evaluation (i.e., depression, anxiety, paranoid thoughts . . . ). If he were to participate in such therapy, he would likely benefit more from a behaviorally based approach, as he would likely not do well with insight-oriented therapies."



Dr. Filoeto's recommendation for behaviorally based therapy is lukewarm at best, and he concedes that it is possible that insight-oriented therapy might benefit Raymundo in motivating him to learn effective parenting. Raymundo also told the social worker that his therapy sessions were useful.

Additionally, Lopez testified that Parent-Child Interaction Therapy (PCIT)—a behaviorally based therapy approach he was familiar with—would not work well for Raymundo because of his verbal comprehension problems. During PCIT, the patient interacts with the child while wearing an earpiece and receives instruction or coaching from therapists who are located in another room observing the interaction.

Raymundo's complaint that the social worker did not adequately address his depression is not well founded. The social worker should not be faulted because Raymundo waited until January to see a therapist; Lopez provided him with a list of therapists as early as August. The social worker also gave Raymundo referral lists again in October and January and encouraged him to enroll in therapy during their conversations. Raymundo also criticizes the quality of Dr. O'Roarty's therapy, but he did not raise this concern with the social worker. Instead, Raymundo told Lopez the therapy was useful.

Raymundo also attacks the juvenile court's assumption that Dr. O'Roarty was aware of his disabilities or the type of therapy that was warranted. But Lopez testified he provided the psychological and neuropsychological evaluations and in-home parenting progress reports to Dr. O'Roarty. The juvenile court's assumption is not at all like the one made by the court in *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 796-797, in which court erroneously abdicated its responsibility to make findings and instead deferred to the

child welfare agency's determination without evidence to support it. Here, in making its conclusion that Dr. O'Roarty was aware of Raymundo's disabilities, the juvenile court had before it "substantial *evidence* which appears in the record" that Lopez had provided the therapist with the necessary documentation setting forth the disabilities and recommended therapy. (*Id.* at p. 795.)

Substantial evidence supported the juvenile court's finding Raymundo received reasonable services that were tailored to his special needs. Although Agency did not provide Raymundo with perfect services, the services were reasonable under the circumstances presented here. (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 547.)

#### DISPOSITION

The petition is denied. The request for stay is denied.

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

O'ROURKE, J.